

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED

MAR 03 2025

CLERK, U.S. DISTRICT COURT
TEXAS EASTERN

JENNIFER RYAN,

Plaintiff,

v.

PAYPAL INC.,

Defendant.

CIVIL ACTION NO.: 4:22-cv-559

JURY TRIAL DEMANDED

PLAINTIFF'S SUPPLEMENTAL MOTION TO DECLARE ARBITRATION WAIVED

TO THE HONORABLE JUDGE AMOS MAZZANT:

Plaintiff Jennifer Ryan, pro se, files this Supplemental Motion to Declare Arbitration Waived, supplementing her original Motion (*Dkt. #50, filed February 24, 2025*), pursuant to Federal Rule of Civil Procedure 15(d) and Local Rule CV-7. Plaintiff incorporates all prior pleadings (*e.g., Dkt. #9, #44, #47, #49*) and exhibits, asserting that Defendant PayPal Inc. ("PayPal") has waived its right to enforce arbitration under the User Agreement ("*UA*," *Dkt. #10-8*) through its litigation conduct, including its Response to Plaintiff's Supplemental Motion to Lift Stay (*Dkt. #51, filed February 26, 2025*), and its failure to pursue arbitration despite mutual contractual obligation. Plaintiff seeks an order declaring arbitration waived, lifting the stay (*Dkt. #25*), and allowing this case to proceed in this Court.

I. INTRODUCTION

1. The UA mandates that "*any and all disputes or claims... shall be resolved exclusively through final and binding arbitration*" (*Dkt. #10-8, p. 38*), with "*all issues*" for the arbitrator(s) except "*arbitrability, the scope or enforceability*" (*id.*), intended as "*more informal than a lawsuit in court*" (*id.*).

2. PayPal moved to compel arbitration (*Dkt. #10, August 29, 2022*), securing a stay (*Dkt. #25, March 15, 2023*). Yet, for 23 months post-order (*March 2023–March 2025*), PayPal has neither initiated arbitration nor enforced it, despite mutual duty (“*you or PayPal may initiate*,” *Dkt. #10-8, p. 38*), abandoning the process after Plaintiff’s AAA filing lapsed (*Exhibit 2—AAA Letter, October 3, 2023*).
3. Over 32 months (*July 2022–March 2025*), PayPal has litigated in court, with *Dkt. #51* arguing substantive merits of Plaintiff’s claims (state actor status) and evidence (hearsay), exceeding the UA’s court-limited scope and waiving arbitration (*Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1714 (2022)).

II. FACTUAL BACKGROUND

4. Plaintiff incorporates the factual recitations in *Dkt. #50* and prior pleadings (*Dkt. #9, #44, #47, #49*).

Key updates follow:

- a. **Arbitration Order**: On March 15, 2023, this Court granted PayPal’s Motion to Compel Arbitration (*Dkt. #10*), staying proceedings (*Dkt. #25*) under 9 U.S.C. § 3.
- b. **Plaintiff’s AAA Attempt**: Plaintiff filed with AAA (*Case No. 01-23-0003-6758, August 24, 2023, Exhibit 1*), but PayPal failed to engage, leading to closure for uncured deficiencies (*Exhibit 2—AAA Letter, October 3, 2023*). PayPal received notice but took no action (*id.*).
- c. **32 Months Litigation**: PayPal removed this case (*Dkt. #1, July 2, 2022*) and filed substantive responses (*Dkt. #10, #33, #36, #45, #51*) over 32 months, including 23 months post-*Dkt. #25*, without seeking dismissal or AAA filing.
- d. **Dkt. #51 Overreach**: On February 26, 2025, PayPal responded to Plaintiff’s Supplemental Motion to Lift Stay, arguing Plaintiff’s state actor claim lacks “direct nexus” or “evidence” of government control (*Dkt. #51, p. 3*), objecting to exhibits as hearsay (*p. 2 n.1*), and seeking denial for insufficient proof—substantive merits, not arbitrability.

e. **Government Targeting of Dissent:** Plaintiff submits new evidence:

- i. Exhibit 3, DNI's "Domestic Violent Extremism Poses Heightened Threat in 2021" (March 1, 2021), labels political dissent like Plaintiff's January 6 protest (Dkt. #49, ¶¶ 6-9) as "violent extremism" (p. 4), issued post-J6 and closely tied to PayPal's January 21, 2021, ban (Dkt. #9, Exhibit A), suggests government-driven targeting.
- ii. Exhibit 4, CRS testimony by Rena S. Miller (January 15, 2020), flags small fundraisers like Plaintiff's \$200 effort (Dkt. #49, 7) as "terrorism financing" risks (p. 5), predating and aligning with PayPal's ban, linking it to federal policy (Dkt. #49, 27).

III. LEGAL STANDARD

10. Under Morgan v. Sundance, Inc., 142 S. Ct. 1708, 1714 (2022), arbitration is waived when a party "knowingly relinquish[es] the right to arbitrate by acting inconsistently with that right"—intent alone suffices, no prejudice required.
11. Fifth Circuit precedent finds waiver where a party litigates substantially (Cabinetree of Wis. v. Kraftmaid Cabinetry, Inc., 50 F.3d 388, 391 (5th Cir. 1995)—18 months) or delays post-order (Carson v. American Brands, Inc., 606 F.2d 420, 424 (4th Cir. 1979)—11 months). Inaction post-order lifts stays (*In re Winter Park Assoc. Ltd. P'ship v. Jaspar*, 1999 WL 739433, at *2 (S.D. Tex. 1999)—14 months).
12. Contract law holds that failing to enforce a right (e.g., arbitration) while acting inconsistently waives it (*Restatement (Second) of Contracts* § 246 (1981)).

IV. ARGUMENT

A. PayPal Breaches UA by Litigating Substantive Claims in Court

13. The UA mandates "any and all disputes or claims... shall be resolved exclusively through final and binding arbitration" (Dkt. #10-8), with "all issues" for the arbitrator except "arbitrability, the scope or enforceability" (id.). PayPal's Dkt. #51 breaches this:

Substantive Argument: PayPal argues Plaintiff's state actor claim (*Dkt. #49, 27*) lacks "direct nexus" or "evidence" of government control (*Dkt. #51, p. 3*)—a merits issue, not arbitrability (*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 n.13 (1985)—substance to arbitrator).

- i. Exhibits 3 and 4 prove otherwise: Exhibit 3, DNI's "Domestic Violent Extremism Poses Heightened Threat in 2021" (*March 1, 2021*), labels political dissent like Plaintiff's J6 protest (*Dkt. #49, ¶¶ 6-9*) as "violent extremism" (*p. 4*), driving PayPal's ban. Exhibit 4, CRS testimony (*January 15, 2020*), flags small fundraisers like Plaintiff's \$200 effort (*Dkt. #49, 7*) as "terrorism financing" risks (*p. 5*), tying PayPal's January 21, 2021, termination (*Dkt. #9, Exhibit A*) to government policy (*Dkt. #49, 27*).
- ii. This direct evidence—DNI directives post-J6 and CRS policy predating Plaintiff's ban—shows PayPal acted as a state proxy, a substantive dispute for arbitration, not court. PayPal's *Dkt. #51* denial breaches "all issues" to arbitrator (*Dkt. #10-8; Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)).

- **Hearsay Objection:** PayPal objects to Plaintiff's exhibits as hearsay (*Dkt. #51, p. 2 n.1*), claiming "no evidence supports Ryan's allegations"—weighing proof, a substantive ruling for arbitrator (*Morgan*—court avoids merits).

14. Post-*Dkt. #25*, PayPal should have deferred to arbitration, stating: "*All claims are for the arbitrator*" (*Dkt. #10-8*). Instead, *Dkt. #51* seeks judicial denial of Plaintiff's claims, breaching "*all issues*" to arbitrator (*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967)).

B. PayPal's 32-Month Litigation and 23-Month Inaction Show Intent to Abandon Arbitration

15. PayPal's removal (*Dkt. #1*) and responses (*Dkt. #10, #33, #36, #45, #51*) over 32 months—23 post-*Dkt. #25*—without AAA filing or dismissal show intent to litigate (*Morgan*, 142 S. Ct. at 1714—32 months exceeds *Cabinetry 18*).

16. Plaintiff filed with AAA (*Exhibit 1—August 2023*), but PayPal’s inaction led to closure (*Exhibit 2 – October 2023*)—23 months post-Dkt. #25 without pursuit breaches mutual duty (Dkt. #10-9) (Carson, 606 F.2d at 424—11 months waived; Winter Park, 1999 WL 739433, at *2—14 months lifted stay).

C. PayPal Seeks Court Advantage, Not Arbitration’s Informal Resolution

17. Dkt. #51 (p. 3—*state action*) and prior filings (e.g., Dkt. #33) argue claim merits—e.g., “no nexus” to government—seeking court denial, not arbitration’s “informal” process (Dkt. #10-8) (Price v. Drexel Burnham Lambert, Inc., 791 F.2d 1156, 1160 (5th Cir. 1986)—18 months waived)).
18. PayPal litigates substance when scrutinized (Dkt. #51) but pushes arbitration when advantageous (Dkt. #10)—“having it both ways” waives (Morgan—intent to exhaust Plaintiff).

D. Plaintiff’s Good Faith vs. PayPal’s Breach

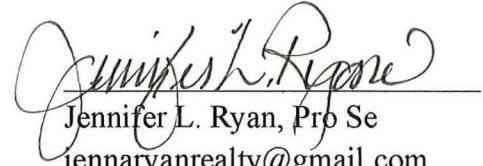
19. Plaintiff sought AAA arbitration (*Exhibit 1—August 2023*), but PayPal’s non-participation closed it (*Exhibit 2 – October 2023*)—23 months inaction post-Dkt. #25 breaches mutual duty (Dkt. #10-8) (Morgan).

V. CONCLUSION

20. PayPal’s 32-month litigation (Dkt. #51—*substance*), 23-month inaction post-Dkt. #25, and breach of “all claims” to arbitrator (Dkt. #10-9) waive arbitration (Morgan, 142 S. Ct. at 1714; Carson, 606 F.2d at 424; Winter Park, 1999 WL 739433, at *2). Plaintiff’s new counsel stands ready to escalate this fight, leveraging irrefutable evidence of government collusion (Exhibits 3, 4, Dkt. 49, G). Plaintiff requests:
- Declaration of arbitration waiver.
 - Lifting of stay (Dkt. #25).
 - Case to proceed in this Court.
 - Any further relief deemed just.

March 4, 2025

Respectfully Submitted,


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Certificate of Service

I certify that on March 4, 2025, I served this via CM/ECF on all counsel of record, per Fed. R. Civ. P. 5 and Local Rule CV-5.

/s/ Jennifer L. Ryan